

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
	)	MB Docket No. 08-214
Herring Broadcasting, Inc. d/b/a WealthTV,	)	File No. CSR-7709-P
Complainant	)	
v.	)	
Time Warner Cable Inc.	)	
Defendant	)	
	)	
Herring Broadcasting, Inc. d/b/a WealthTV,	)	File No. CSR-7822-P
Complainant	)	
v.	)	
Bright House Networks, LLC,	)	
Defendant	)	
	)	
Herring Broadcasting, Inc. d/b/a WealthTV,	)	File No. CSR-7829-P
Complainant	)	
v.	)	
Cox Communications, Inc.,	)	
Defendant	)	
	)	
Herring Broadcasting, Inc. d/b/a WealthTV,	)	File No. CSR-7907-P
Complainant	)	
v.	)	
Comcast Corporation,	)	
Defendant	)	

TO: Chief, Media Bureau

**SUPPLEMENT TO HERRING BROADCASTING, INC.'S MOTION FOR  
REVOCATION OF HEARING DESIGNATION**

Herring Broadcasting, Inc., doing business as WealthTV, (“WealthTV”) supplements its motion for revocation of the hearing designation of the four above-captioned matters in which it is the Complainant based on the transcript of the November 25, 2008 pre-hearing conference, relevant excerpts of which are attached. Developments

at the November 25 pre-hearing conference further support the requested revocation of the designation for hearing.

The Media Bureau's October 10, 2008 Memorandum Opinion and Order and Hearing Designation Order, ("HDO") directed the presiding judge to render a recommended decision and remedy in these matters, as well as two others, within 60 days.<sup>1</sup> At the November 25 hearing, Chief Judge Sippel, who has replaced Judge Steinberg as presiding judge because of the latter's imminent retirement, set a hearing commencement date of March 17, 2009. Further, this commencement date marks the beginning of the hearing days for the full complement of six complaints; it does not necessarily mark the start of hearing days for any of the WealthTV complaints. This is well outside the 60 days specified in the ordering clauses of the HDO. Further, no date has been set for completion of the hearing nor for the rendering of a recommended decision.

Chief Judge Sippel indicated that the prior order of Judge Steinberg, dated November 20, which set aside the 60 day deadline as infeasible for one administrative law judge to meet, will continue to govern the proceedings. He further explained that at the time he assigned the six cases to Judge Steinberg, he was aware that Judge Steinberg would be retiring by the beginning of January 2009. Upon discussion, the two had agreed that it was reasonable to hope that a recommended decision could be rendered before Judge Steinberg's retirement. Chief Judge Sippel did not indicate whether any

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<sup>1</sup> *Herring Broad., Inc. v. Time Warner Cable Inc. et al.*, Mem. Op. & Order & Hearing Designation Order, MB Docket No. 08-214, DA 08-2269 (rel. Oct. 10, 2008) ¶¶ 124, 128, 132, 140. The Media Bureau subsequently issued an Erratum on October 15 2008; the Erratum altered neither the 60 day period nor the date from which the 60 day period runs, namely the issuance date of the HDO, October 10, 2008. See, *Herring Broad., Inc. v. Time Warner Cable Inc. et al.*, Erratum, MB Docket No. 08-214 (rel. Oct. 15, 2008).

consideration was given to assigning more than one administrative law judge to the pending matters in view of the fact that six cases were covered by 60 days specified in the Media Bureau's ordering clause. Nor did he indicate whether he, as the new presiding judge, believed that re-evaluation of the feasibility of the 60 day timeline was in order, in line with the reasonable hope that he indicated he shared with Judge Steinberg at the outset about issuing a recommended decision near that timeframe

Within only a few days of receiving the assignment, Judge Steinberg, then serving as the presiding judge, ruled in a pre-hearing conference that the scheduling order that he had previously issued only a few days before was suspended. That schedule was reasonably consistent with the 60 day deadline and, in WealthTV's judgment, demonstrated its feasibility. The verbal ruling on suspension came before complainants had even filed oppositions to defendants' pleadings seeking relief from the 60 day deadline. The presiding judge subsequently issued an order declaring the 60 day deadline impossible for one administrative law judge to meet.

In these circumstances, WealthTV respectfully suggests that the Media Bureau has greater resources available to apply to prompt and timely resolution of this matter. Moreover, the Media Bureau has full familiarity with the existing voluminous record which provided the foundation for its prima facie findings and for the HDO. In contrast, both Judge Steinberg and Chief Judge Sippel emphasized that the hearing would start from scratch.

Regard for due process is a paramount public interest; its proper observance is not always and automatically honored by extending the time for action. Beyond a certain point – which in the policy judgment of the Media Bureau, with reportedly considerable

input from the members of the Commission, was 60 days – more time simply affords large defendants the refuge of delay. Of equal importance in evaluating the proper observance of due process is the harm that delay inflicts on a small business that seeks recourse to the Commission’s processes for relief from discrimination, which the statute instructs the Commission should provide for expeditious resolution of allegations of discrimination. The 60 day time period established by the HDO was an appropriate exercise by the Media Bureau of judgment in policy, affording due respect to the statute’s instruction, and cannot properly be set aside or disregarded by the presiding judge.

If the hearing on WealthTV’s complaints does not even begin until mid-March 2009, the cycle for a final decision may well have these complaints pending for nearly two years before the Commission, or more. This cannot reasonably be squared with Congress’ instruction to the Commission in the statute to provide for expeditious resolution of carriage access complaints.

The proceedings at the November 25 hearing also illuminated how different the WealthTV cases are from those brought by the other complainants. The issues are diverse, and even discussions about discovery and scheduling are complicated by the differences among the cases, which are much more numerous and significant than their similarities. For this additional reason, the Media Bureau should separate the WealthTV complaints from the others for prompt decision.

For all the foregoing reasons, and for those argued in its original Motion, WealthTV urges that the Media Bureau promptly grant its Motion.

Respectfully submitted

WealthTV

By Its Attorney  
Kathleen Wallman, PLLC

\_\_\_\_//signed//\_\_\_\_\_

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December 3, 2008

## CERTIFICATE OF SERVICE

I, Kathleen Wallman, hereby certify that on December 3, 2008 I caused the foregoing Supplement to Motion for Revocation of Hearing Designation to be served upon or furnished to the following individuals:

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December 3, 2008

\_\_\_\_//signed//\_\_\_\_

Kathleen Wallman

## P R O C E E D I N G S

(2:12:06 p.m.)

JUDGE SIPPEL: Just to let you all know who I am, I'm Richard Sippel. I'm the Chief Administrative Law Judge. I think it was self-explanatory in my order the other day as to what has transpired. After 40 some odd years, Judge Steinberg, my colleague, is going to be leaving the Commission in early January, and in good faith I assigned him the case to begin with, initially, on the hope, I'm not going to say on the expectation, but on a, what I consider to be, and he agreed with me, a reasonable hope that he might be able to hear this case before he left in light of the way it was set up in the Hearing Designation Order. It didn't work.

Judge Steinberg thought this through very carefully, and you all know how he came out on that. I'm talking specifically about the 60 days. So you've got a new one to deal with, I guess, if I can put it that way.



1 I'm going to do my best to move this case  
2 along, but on the other hand, I don't want to  
3 feel like I'm being pushed in a corner on  
4 anything. And there's obviously a lot --

5 there's a lot at stake here. There are many  
6 parties, and there are very many lawyers, so  
7 this is going to be a challenge.

8 I'm not going to ask for names at  
9 this point. I guess I'm concerned about the  
10 time. Maybe I had better do that. Why don't  
11 I start from the right side of the room. I  
12 just ask lead counsel to just identify  
13 themselves, please, for me.

14 MR. SOLOMON: I'm David Solomon,  
15 representing Comcast.

16 JUDGE SIPPEL: Mr. Solomon. And?

17 MR. COHEN: Jay Cohen for Time  
18 Warner Cable.

19 JUDGE SIPPEL: Okay. And?

20 MR. BECKNER: Bruce Beckner for  
21 Bright House Networks.

22 JUDGE SIPPEL: You're with Bright